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IN THE CORONER'S COURT IN NORTHERN IRELAND

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IN THE MATTER OF AN INQUEST INTO THE DEATHS OF JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK, DAVID McCAFFERTY AND MARGARET GARGAN ('THE SPRINGHILL INQUEST')

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RULING (NUMBER 2)
ON APPLICATIONS FOR PIP STATUS BY
BRIAN PETTIGREW AND 'SM16'

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SCOFFIELD J (*sitting as a coroner*)

Introduction

[1] This is an inquest into five deaths, which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. A brief summary of the factual background is contained in my ruling of 27 February 2023 ('Ruling No 1') in relation to the Ministry of Defence request that I obtain additional documentation. The representation in the inquest remains as set out at the start of that ruling, save that, for the purposes of the present applications, Mr Gerard McGettigan (led by Mr Arthur Harvey KC and instructed by Harte Coyle Collins, Solicitors) appeared for the first applicant for 'properly interested person' (PIP) status, Mr Brian Pettigrew; and, more recently, Mr Ian Skelt KC (instructed by McCartan Turkington Breen acting as agents for Devonshires Solicitors LLP) appeared for a further applicant for PIP status, known as 'SM16.' I am grateful to all counsel for their helpful written and oral submissions on the applications.

The applications

[2] The first application for PIP status is from Mr Brian Pettigrew. He provided a signed witness statement to me dated 3 January 2023, following interview with the Coroner's Investigator. He was shot and injured during the events in Springhill on 9 July 1972, at which time he was 17 years old. The applicant's account is as follows. He says that he was at home with his family that evening. John Dougal (one of the deceased), a friend of his brother John Pettigrew and of his, called to the house; and about 9.00 pm his brother John and John Dougal went to get cigarettes.

Brian Pettigrew then left his home after hearing a number of gunshots, at which point he saw Martin Dudley lying on his back with another person tending to him near a car which had stopped. As he moved towards these two, he describes being shot in the arm; and he believes the shooting came from the sheds at Corry's Timber Yard where the Army were stationed. As he spun round, he could see John Dougal and John Pettigrew come running towards him to help. As he was endeavouring to make his way back to the house, he was shot again, this time in the back. His father pulled him back into his house; and he then gives an account of further developments there. He had serious injuries from gunshot wounds but survived. His evidence is that he did not see any gunmen in the area at the time.

[3] Mr Pettigrew is in due course to be called as a witness at this inquest. His application for PIP status was precipitated, in particular, by lines of questioning pursued on behalf of the MOD with civilian witnesses during the evidence which has already been given in Module 1 of this inquest. These included questions put to his younger brother, Martin Pettigrew, who has already given evidence. The tenor of some of this questioning was whether John Pettigrew and/or Brian Pettigrew were involved with a paramilitary organisation. The submissions in support of the application included detailed reference to the transcript of some of the earlier hearing days.

[4] Towards the start of the Module 1 hearings, there were legal submissions made in relation to the extent to which witnesses could be compelled to answer questions directed towards their knowledge of who was in an illegal paramilitary organisation or who was unlawfully armed at the time. The basic position reached was that witnesses could not be compelled to answer those questions and, where they were asked such a question which may tend to incriminate them (because the answer would or may disclose knowledge of a serious offence which they had not reported to the authorities at the time, so potentially disclosing an offence on their part under section 5 of the Criminal Law Act (Northern Ireland) 1967), the witness must be given a warning pursuant to rule 9 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ("the 1963 Rules"). For present purposes, however, the relevant issue is the line of enquiry apparently being pursued in relation to Brian Pettigrew and others. For instance, one witness (Ms Theresa McCann) was expressly asked whether any of the Pettigrews were known to her to be in the IRA, Cumann na mBan or Fianna; and Martin Pettigrew was asked whether his brothers John and Brian Pettigrew were in the IRA. Both of these witnesses relied upon their privilege against self-incrimination so as not to answer the question. Other questions were asked of witnesses as to whether they knew of people who lived in or around Westrock Drive (where Brian Pettigrew lived) who were involved in unlawful organisations.

[5] As a result, Brian Pettigrew and his representatives apprehended that other witnesses were going to be asked about him; that there was likely to be an intention on the part of the MOD to adduce evidence about him which was unfavourable; and, in summary, that it was to be suggested in particular that he was a member of the IRA or another paramilitary organisation which was, or may have been, active on the night

of the shootings with which this inquest is concerned. In light of this, it is submitted that there is a risk that Mr Pettigrew could face criticism as a result of these proceedings and that it is appropriate that he have PIP status conferred upon him in order to be properly represented. When these matters came to the attention of Mr Pettigrew and his representatives, they applied (initially by letter and later, at my suggestion, by way of a more formal application) for PIP status. At a recent review hearing, I stated that I had determined that this application should be granted but would set out my reasons for that in a short written ruling, which I now do.

[6] The second application which is before me has arisen more recently and in a more succinct manner. The application has been made by way of letter dated 22 September 2023 from McCartan Turkington Breen, Solicitors, on behalf of a military witness known as 'SM16.' In the application, he is described as a former military witness and it is noted that, "It is alleged that SM16 was a platoon commander and deployed in that capacity when at least some of the events to be examined in these inquests occurred." Given SM16's alleged role as a platoon commander, it is said that this witness's actions are likely to be of significant relevance to the inquest; that it is foreseeable that his conduct will come under close scrutiny; and that he may be subject to criticism. SM16's application draws attention to the suggestion on the part of the next of kin in this inquest that the shooting of the deceased was entirely without justification and a "massacre."

The relevant legal principles

[7] Rule 7(1) of the 1963 Rules provides as follows:

> "Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who in the opinion of the coroner is a properly interested person shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor, provided that the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question."

[8] A variety of parties addressed me on the relevant legal principles, and the approach taken by coroners in this jurisdiction, in relation to the grant of PIP status in inquests. The majority of argument on the first application was heard in advance of the decision of the Court of Appeal in *Re Cummings' Application* [2023] NICA 44. In light of the fact that I was aware that that case was due to be heard, which would examine this issue in some detail (for the first time, it would appear, at Court of Appeal level in this jurisdiction), I deferred ruling on Mr Pettigrew's application in order to await the guidance which would be provided by the Court of Appeal judgment. I also provided the parties in this inquest with an opportunity to supplement the submissions they had already made by reference to the Court of Appeal's decision. In the event, only Mr Pettigrew's representatives did so.

[9] The approach to be adopted to the grant of PIP status is now helpfully explained by the judgment of the Court of Appeal in the *Cummings* case. Full consideration of that judgment is warranted. However, for present purposes, I would summarise the key principles to be drawn from it which are relevant to the present applications as follows:

(a) Being a mere survivor of an incident which forms the subject matter of an inquest, because others were killed during the incident, will seldom if ever be sufficient on its own to warrant the grant of PIP status. Something additional will usually be required.

(b) This will usually be that the applicant for PIP status is at risk of a finding of wrongdoing, in particular where that wrongdoing itself may have caused or materially contributed to the death or deaths under investigation.

(c) Another circumstance where it may be appropriate to provide PIP status to a surviving victim of the incident is where that person was himself or herself an intended target of a planned attack. That is another basis upon which a survivor may be distinguished from a mere witness, who does not warrant the conferral of PIP status.

[10] There have been a number of high profile inquests in recent years where survivors of fatal attacks, either as a group or individuals, have had PIP status refused: for example, the 7/7 London Bombing Inquests and the Hillsborough Inquests. Something more is usually required. The point at sub-paragraph (b) above reflects and builds upon the reference in *Re Northern Ireland Human Rights Commission's Application* [2000] NIQB 61, drawing on Leckey & Greer's helpful textbook *Coroners' Law and Practice in Northern Ireland* to it being appropriate for PIP status to be conferred on anyone who may in some way be responsible for the death or otherwise "at some special risk" in the inquest proceedings. An example, prior to the Court of Appeal's ruling in *Cummings*, of similar principles being applied is in His Honour Judge Gilpin's ruling, sitting as a coroner, in the case of *In the Matter of an Inquest into the Death of Sam Marshall on 7 March 1990* [2023] NI Coroner 2. In that case, the coroner did not accept that merely being the survivor of a fatal attack was enough to attract PIP status. (That also reflects the approach taken in the Kingsmill Inquest, in which His Honour Judge Sherrard, sitting as a coroner, did not accede to the application for PIP status by the sole survivor, who had himself been seriously injured, of an attack which killed 10 others). However, Judge Gilpin granted the application in the *Marshall* case on the basis of the scrutiny which would inevitably have to be undertaken of the association between the PIP applicants' and the deceased, in circumstances where there was potential for critical comment about them in respect of criminality which was relevant to the targeting of the fatal attack. A similar approach was taken by Senior Coroner Leckey in relation to the conferral of PIP status on a Mr McCauley in the inquest into the death of Michael Tighe.

The positions of the properly interested persons

[11] In relation to the first application, Mr Pettigrew obviously seeks PIP status. He has made the application and made a range of submissions in support of it. The next of kin of the deceased were supportive of the application. They considered that Mr Pettigrew was someone at particular risk in the inquest; and that his rights under art 2 ECHR may be engaged in light of the life-threatening attack upon him. The representatives of the next of kin PIPs also did not wish to be in the position of having to, or trying to, defend the interests of someone whom they did not represent. The PSNI submitted that determination of this application should be deferred pending completion of a disclosure exercise which is being undertaken, at the conclusion of which (in the PSNI's submission) the court would be best placed to understand the nature and extent of any evidence on the basis of which any wrongdoing might be alleged against Mr Pettigrew. The applicant's submissions at this stage were, the PSNI submitted, hypothetical. In any event, the mere asking of questions about potential criminality may not by itself be sufficient to justify PIP status. Notwithstanding that, the PSNI's position was not one of "outright opposition." The MOD adopted a similar position, suggesting that the application may be better examined when all of the material is available but not adopting any formal position of support or opposition.

[12] In relation to the second application, SM16 seeks PIP status. Some of the next of kin suggest that this application is premature and that, for the moment, there is an insufficient basis for contending that SM16 could be criticised on the basis that he may have been, in some way, responsible for any of the deaths. It is therefore suggested that a determination of his application for PIP status should be deferred until his witness statement has been provided and/or until further information becomes available. The next of kin of Fr Fitzpatrick had no particular submissions to make, although said that this was in part because of the limited information provided in the application. Mr Pettigrew's representatives had no submission to make; nor did the PSNI. The MOD took no issue with the application.

The prematurity issue

[13] In both cases, there is limited information at the moment in relation to the precise role of the applicant for PIP status or their activities on the night in question. (In the case of Mr Pettigrew, I at least have a witness statement from him giving his version of events. What others may say about his role is less clear.) Having said that, in many cases where an application for PIP status is made, particularly in inquests involving complex and/or contentious events, this will be the case. That is because, to facilitate meaningful participation throughout the inquest, applications for PIP status will often be made at or towards the start of the process. Of necessity, there will be much more evidence to be gleaned as the inquest process and oral hearings proceed. As a result, the conferral of PIP status will often involve an element of (informed) speculation as to where the evidence might lead.

[14] A balance has to be struck between, on the one hand, determining an application for PIP status at a time when a properly informed decision can be made

and, on the other, the risk of determining the application too late, such that the conferral of PIP status unduly delays the progress of the inquest or is of limited assistance to the party on whom the status is conferred. In legacy inquests, the Legacy Inquests Case Management Protocol issued by the then Presiding Coroner (Mr Justice Huddleston) in January 2021 suggests the coroners should tend towards making early decisions on these applications, rather than postponing them. Para 14 of that Protocol states that: "Decisions on the status of a Properly Interested Person will be taken by the Coroner at as early a stage of the inquest process as possible."

[15] In the present case, there is – as the parties have recognised in their submissions – an additional element of time pressure in this case. This arises from the fact that, as a result of the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, there will be an obligation on coroners conducting inquests into deaths which resulted directly from the Troubles, which were initiated before 1 May 2024, to not progress the conduct of the inquest and, indeed, to close the inquest on that day. That is unless, on that day, the only part of the inquest that remains to be carried out is the coroner (or jury, as the case may be) making or giving the final determination, verdict or findings, or something subsequent to that. I have determined, in consultation with the Presiding Coroner and Lady Chief Justice, that the present inquest is one in respect of which there is a realistic prospect of reaching that point by the relevant date, albeit that this will be challenging. The hearing dates for a further module (in which SM16 will be expected to give evidence) have been moved forward in pursuit of this aim. I have taken this factor into account in the exercise of my discretion as to the conferral of PIP status at this point.

Determination re Brian Pettigrew

[16] I accept the submission made on behalf of Mr Pettigrew that, insofar as can be determined at this stage, his position goes beyond that of mere witness or survivor to someone who was more centrally concerned with the issues which lie at the heart of this inquest. In particular, it seems clear from the line of questioning which has been pursued with a number of civilian witnesses who have given evidence already that, at the very least, a line of enquiry which the MOD wishes to pursue in this inquest by its questioning is that Mr Pettigrew may have been involved in an unlawful organisation which was active on the night of the deaths.

[17] Mr Aiken KC for the MOD would not be drawn on what, if any, "case" the MOD was or would be making. He submitted that, as a PIP itself, the MOD should not be required to disclose what case it was making, insofar as it could be said to have any case at this stage since, more generally, the role of a PIP was simply to assist the coroner in his or her investigation by asking questions and testing the evidence given by witnesses, without knowing where that may lead. Although I suspect that it might have been possible for me to have been given some further assistance as to lines of questioning which would be pursued on the MOD's behalf, and the evidential basis upon which they would be pursued, Mr Aiken was probably right to say that the MOD could not be compelled to disclose this in advance. The same may be said of individual

military witnesses if and in the event that any of them are ultimately granted PIP status. I simply have to make my own assessment of this based on the questioning to date and have done so.

[18] As summarised in Ruling No 1, the narrative presented by previous statements of military witnesses is that the Army position was under fire from civilian gunmen (engaged in unlawful activity, probably as part of the IRA) and that the use of force by the military stationed there was directed at, and in response to, armed civilians. Questioning on behalf of the MOD to date has, unsurprisingly, sought to explore that line of enquiry. Although the mere fact that Mr Pettigrew was shot is not of itself determinative, I cannot detach this fact from the case made at the time by the soldiers who discharged their weapons in their RMP statements and therefore at the original inquest, namely that they only shot at (and in some cases hit) persons who were, or whom they believed to be, armed. Assuming Mr Pettigrew was, or may have been, shot by one of these soldiers, it almost inevitably follows that the soldier or soldiers who did shoot him will contend that he was (or was perceived to be) armed and posing a threat.

[19] This is reflected in the submissions of the next of kin in support of the application. Assuming some of those who were shot were shot by the Army, one of the issues which must necessarily be investigated in this inquest (whether or not raised by the MOD) is whether there was anything justifying the discharge of live rounds. There is an inevitability that this will be explored with Mr Pettigrew in his evidence.

[20] In light of the above, I consider that Mr Pettigrew does fall within the category of persons who may – depending upon how the evidence pans out – be at risk of criticism. His representatives have correctly identified that there is an unavoidable element of prediction or conjecture in assessing this issue at the present time. Nonetheless, it seems that a positive case is to be explored in respect of whether he was armed and/or involved in unlawful activity at the time. Anyone who was an armed civilian in the area at that time is likely to have been an intended target of Army fire. Alternatively, it is possible that such a person may have materially contributed to the deaths (by means of causing or engaging in a chaotic exchange of fire). Indeed, certain of the representations already made on behalf of the MOD suggest that – again depending on how the evidence pans out (particularly the pathology and ballistics evidence) – a positive case may be made that a civilian gunman firing upwards towards Corry's Yard may have been directly responsible for causing the death of at least one of the deceased.

[21] In all of the above circumstances, it seems to me that fairness does require the conferral of PIP status on Mr Pettigrew. The application also relied upon a number of fall-back points, including that the applicant's evidence is likely to be important to the inquest; that he was present during central events; that he was shot and significantly injured; that he was therefore nervous and distressed about the prospect of giving evidence, etc. On their own, these factors would not have been sufficient, in my view, to warrant the conferral of PIP status. In addition, although I need not conclusively

determine the point, in light of the decision of the Court of Appeal in the *Cummings* case, I would not have been persuaded (as argued by the next of kin of the deceased) that the engagement of Mr Pettigrew's own article 2 rights was a sufficient basis for granting him PIP status. The investigation of the attack upon him can and ought to have been pursued by other means. The investigation with which I am concerned in this inquest is into the deaths which occurred, not the injuries which he sustained (albeit that, as a matter of fact, there is considerable overlap between the two matters).

Determination re SM16

[22] I am also satisfied on the information and evidence before me already that there is a sufficient risk of criticism of SM16 to warrant his being granted PIP status. Albeit the letter of 22 September 2023 which I have mentioned above refers to it being "alleged" that he was a platoon commander and deployed in that capacity in Springhill at the relevant time, other information points more strongly towards that conclusion. Indeed, in an email from Devonshires, after SM16 changed representation from the Crown Solicitor's Office to that firm, and after having taken instructions, it was suggested without equivocation on his behalf that he was a platoon commander. In addition, in common with other potential military witnesses, SM16 completed and returned a questionnaire which was provided to him when he was first contacted by the Legacy Inquest Unit. In his response to this questionnaire SM16 indicated that, in July 1972, he was serving as the platoon commander of 7 Platoon, C Company of the King's Regiment "from first to last." An interview with the Historical Enquiries Team in 2014 concluded that he was in Corry's Yard during the evening of 9 July 1972 and discusses various instructions or orders which he may have given. I further understand from my investigator that, in a number of recent interviews, some other military witnesses (whose statements are being prepared) have identified SM16 as being a platoon commander within C Company, 1st King's Regiment.

[23] The case made by the next of kin is essentially that the Army was responsible for the deaths in circumstances where there was no warrant whatsoever for the firing of live rounds at any of the deceased. It is inconceivable in my view that, if that version of events was ultimately found to be true in whole or in part, that a person in a position of authority over those responsible for the shootings would not at least be at risk of significant criticism in relation to the events.

Conclusion

[24] It was common case that there is little, if any, scope for an individual to be conferred with a status which represents a halfway house between that of mere witness and a properly interested person. Although additional facilities and rights can be afforded to a witness by a coroner (such as the right to have their own representatives attend and give them advice; advance disclosure of documentation relevant to their evidence, etc.) there are other rights which are limited to those upon whom PIP status has been conferred. Where the facility to question other witnesses

about matters relevant to one's own position is appropriate, the conferral of PIP status is apt.

[25] There are, of course, five separate inquests being dealt with together in the hearings before me. I have considered whether, in Mr Pettigrew's case, it may be appropriate to confine his PIP status only to some of those inquests. Given the potential linkage between each case, however, it seems to me that it is more appropriate to grant that status in relation to all of the inquests which are being treated as linked. The examination of a witness on behalf of any PIP is, needless to say, subject to the power of a coroner (expressly recognised in rule 7(2) of the 1963 Rules) to disallow any question which is not relevant or not otherwise a proper question.

[26] For the reasons summarised above, the applications for PIP status in relation to both Mr Pettigrew and SM16 are granted.